

Defense Closes Arguments in Trial of Ex-Qwest Chief

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By DAN FROSCH, April 12, 2007

DENVER, April 11 — Joseph P. Nacchio, the former chief executive of [Qwest Communications International](#), never exaggerated the company's growth rates to enhance the value of his personal stock, Herbert J. Stern, a defense lawyer, said Wednesday.

Nor did he dump stock in 2001 simply because other executives warned him that Qwest was in increasing financial trouble, Mr. Stern said in a painstakingly detailed closing argument that lasted nearly six hours. "He did not run to the market because this one or that one told him he could not make the budget," Mr. Stern said. "If he had such wisdom and if he knew for sure, then why in the name of heaven didn't he dump everything he had?"

Mr. Nacchio faces 42 counts of insider trading related to his sale of more than \$100 million worth of Qwest stock in 2001.

The charges stem from a government investigation into an accounting scandal at Qwest, a Denver-based telephone service provider in 14 states, mostly in the West.

In a closing argument that essentially reviewed the entire case, Mr. Stern said that Mr. Nacchio's financial projections for Qwest were based both on prudent financial judgment and the recommendations of a report from an outside financial consultant in 1999, at the time of a merger between Qwest and U S West.

Mr. Stern dismissed as conjecture a series of messages from other Qwest executives that warned Mr. Nacchio about the company's unrealistic financial goals. Mr. Stern said that if his client were truly a cheat, he would have sold other, potentially more valuable stock as well.

"If he had a corrupt heart and was intent on cheating people, he had a perfect out," Mr. Stern said. "He could have sold everything he had."

A federal prosecutor, Colleen Conry, in her closing arguments on Tuesday, painted Mr. Nacchio as a man who intentionally deceived Qwest's investors about the company's dark financial future.

In the prosecution's rebuttal Wednesday, an assistant United States attorney, Cliff Stricklin, reiterated Ms. Conry's primary point that Mr. Nacchio broke the law by using insider information about Qwest to make a fortune.

"You cannot be dishonest and have good faith at the same time," Mr. Stricklin said.

He said Mr. Nacchio's incessant affirmation of Qwest's publicly stated financial targets, despite his knowing the company was in trouble, was ample evidence that he had acted deceitfully.

Mr. Stern, however, sought to play down any connection between Qwest's lagging fortunes and Mr. Nacchio's stock sales, stressing that the options Mr. Nacchio exercised were set to expire.

The prosecution countered that Mr. Nacchio could have waited longer to sell his stock. "He had to put the interest of the company and shareholders ahead of himself, and he failed at that task," Mr. Stricklin said. "He chose to cheat, to make a lot of money."

The jury will begin deliberations on Thursday.